

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: JOHN AND LINDA MOONS dba DALARNA FARMS PARTNERSHIP Facility #60126 Henry County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2012-WW- 29
--	--

TO: Eldon McAfee
Beving, Swanson & Forrest, P.C.
321 E. Walnut Street, Suite 200
Des Moines, Iowa 50309

John and Linda Moons
Dalarna Farms Partnership
5186 Avenue 272
Visalia, California 93277

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and John and Linda Moons dba Dalarna Farms Partnership (Dalarna Farms) for the purpose of resolving prohibited discharges from the animal feeding operation located at 2387 240th Street, New London, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Ryan Stouder, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHN and LINDA MOONS dba DALARNA FARMS PARTNERSHIP

compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. This animal feeding facility was formerly operated under the name New London Dairy, LLC and was purchased by Dalarna Farms on September 11, 2003. On April 1, 2009, Dalarna Farms ceased operating at the facility. The livestock was sold to Etcher Family Farms and Etcher Family Farms is leasing the facility from John Moons with Dalarna Farms. Etcher Family Farms manages the day-to-day operations of the facility. This facility is a animal confinement feeding operation located at 2397 240th Street; New London, Iowa (SE ¼ of the SE ¼ of Section 8, T-71-N, R-5-W, Henry County, Iowa). The facility has three confinement buildings with an earthen manure storage structure. The original construction permit and manure management plan (MMP) for the facility indicated a capacity of 1,600 head of dairy cattle. The 2004 MMP for the facility indicated a capacity of 1,450 head of dairy cattle.

2. Dalarna Farms was issued two previous administrative consent orders while being operated by Steve Carlson with Dalarna Farms for violations of the animal feeding regulations that occurred at the facility. On January 7, 2008, DNR and Dalarna Farms entered into Administrative Consent Order No. 2008-AFO-02. The violations in the administrative consent order included failure to timely submit a MMP update and compliance fees. The administrative consent order assessed a \$2,000.00 penalty. On September 13, 2009, DNR and Dalarna Farms entered into Administrative Consent Order No. 2009-AFO-36. The violations in the administrative consent order included a prohibited discharge and general water quality violations. The administrative consent order assessed a \$1,750.00 penalty. Dalarna Farms was also issued a previous administrative consent order while being operated by Etcher Family Farms. On August 25, 2011, DNR and Dalarna Farms entered into Administrative Consent Order No. 2011-AFO-22. The violation included in the administrative consent order was for not obtaining a construction permit prior to construction. The administrative consent order assessed a \$5,000.00 penalty.

3. On November 7, 2011, Ryan Stouder, DNR Field Office 6 environmental specialist, conducted an earthen basin inspection at the facility. During the inspection, Mr. Stouder observed a black discoloration in an unnamed tributary of South Fork of Big Creek near the facility.

4. On November 8, 2011, Mr. Stouder and Mark Heiderscheit, DNR Field Office 6 environmental specialist, returned to the area to investigate the discoloration of the unnamed tributary. Mr. Stouder and Mr. Heiderscheit observed

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHN and LINDA MOONS dba DALARNA FARMS PARTNERSHIP

and documented silage and other liquid discharging from tile lines into the unnamed tributary. They noted that there was corn silage waste material in the water. The water had a strong silage odor and was brown and black in color. Mr. Stouder and Mr. Heiderscheit investigated surrounding properties and none of the surrounding properties were contributing to the discharge. The field office personnel determined that silage runoff from the facility was entering the tile intake on the facility property and then discharging to the unnamed tributary. The field office personnel collected laboratory samples at various locations around the facility. The laboratory sample results are as follows:

Location	Biochemical Oxygen Demand	Total Suspended Solids	E.Coli	Ammonia
At the tile intake (area where the surface runoff was entering tile)	>850 mg/L	360 mg/L	690,000 MPN/100mL	26 mg/L
Upstream of the tile intake	6 mg/L	180 mg/L	14,000 MPN/100mL	0.29 mg/L
At the discharge point (area where the tile was discharging to the unnamed tributary)	>850 mg/L	52 mg/L	980,000 MPN/100mL	62 mg/L
Downstream of the discharge	>840 mg/L	190 mg/L	1,100,000 MPN/100mL	39 mg/L
At the culvert on 240 th Street	470 mg/L	72 mg/L	190,000 MPN/100mL	24 mg/L

5. On November 15, 2011, Mr. Stouder conducted a follow up investigation at the facility. The runoff to the tile intake was slowed and the tile discharge was a trickle. The tile intake was located south of the road culvert on 240th Street.

6. On November 22, 2011, Mr. Stouder conducted a follow up visit to attempt to dye test the tile system around the facility. The facility used metal drums to cover the tile intakes near the silage piles. The purpose of the dye test was to determine which tile intake was the greatest contributor to the silage runoff. Due to the lack of rainfall, the dye tests were unsuccessful.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHN and LINDA MOONS dba DALARNA FARMS PARTNERSHIP

7. On November 30, 2011, DNR issued a Notice of Violation to Etcher Family Farms and Dalarna Farms for the violations discovered during the investigation. The violations included: a prohibited discharge and general water quality violations. The letter required that the parties 1) completely and permanently plug the tile lines by April 1, 2012; 2) comply with the general water quality criteria regulations; and 3) prevent future discharges. The letter indicated the matter was being referred for further legal review and possible enforcement.

8. On March 12, 2012, Mr. Stouder conducted a follow up visit at the facility and observed that recent rainfall events caused silage runoff to flow over land, enter the road ditch, flow through the tile intake and discharge into the unnamed tributary of South Fork of Big Creek. The discharge was brown in color and the field tests indicated an ammonia concentration of >3ppm. On March 26, 2012, DNR issued a Notice of Violation letter to Etcher Family Farms and Dalarna Farms for the violations discovered during Mr. Stouder's visit. The violations included a prohibited discharge and general water quality criteria. The letter informed the parties that the matter would be referred for further legal review and possible enforcement.

9. Etcher Family Farms has taken appropriate corrective action by submitting an engineering plan to the DNR on August 27, 2012, receiving DNR approval to proceed on August 28, 2012, and completing the actions recommended in the engineering plan in September of 2012.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. On at least two occasions, DNR Field Office 6's investigation determined that silage from the facility was discharged into the unnamed tributary of the South Fork of Big Creek. The above-mentioned facts indicate a violation of these provisions.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants and the water was discolored with a silage odor. The above mentioned facts indicate violations of the general water quality criteria.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHN and LINDA MOONS dba DALARNA FARMS PARTNERSHIP

V. ORDER

THEREFORE, it is hereby ordered and Dalarna Farms agree to do the following:

1. Dalarna Farms shall prevent future discharges from the facility;
2. Dalarna Farms shall submit a written clarification on the animal unit capacity at the facility and provide reasoning on the difference in the numbers between the original MMP and the 2004 MMP. This information shall be submitted to DNR Field Office 6 within 30 days from the date the Director signs this administrative consent order; and
3. Dalarna Farms shall pay a penalty of \$7,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$7,500.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” An economic benefit was achieved by not properly containing the silage at its facility. It is estimated the economic benefit is at least \$500.00 and that amount is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHN and LINDA MOONS dba DALARNA FARMS PARTNERSHIP

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. On at least two different occasions in November 2011 and March 2012, DNR Field Office 6 documented silage discharges that led to documented water quality violations. These violations threaten the integrity of the regulatory programs because compliance with the animal feeding regulations is required of all persons in this state. Based on the above considerations, \$2,250.00 is assessed for the violations documented in November 2011 and \$2,250.00 is assessed for the violations documented in March 2012 for a total assessment of \$4,500.00 for this factor.

Culpability – Dalarna Farms have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to Iowa law. Dalarna Farms has been issued an administrative order for similar violations in the past and should be aware of the requirements. Based on the above considerations, \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Dalarna Farms. For that reason, Dalarna Farms waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in the administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 23rd day of
November, 2012.



John and Linda Moons dba
DALARNA FARMS PARTNERSHIP

Dated this 9 day of
October, 2012.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JOHN and LINDA MOONS dba DALARNA FARMS PARTNERSHIP

#60126; Kelli Book; Field Office 6; EPA; VIII.D.1 and VIII.D.3.a